

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BIBEKANAND SATPATHY, dba
AMADORE ENTERTAINMENT,

Plaintiff,

v.

CATHAY PACIFIC AIRWAYS, LTD.;
COVENANT AVIATION SECURITY, LLC;
TRANSPORTATION SECURITY
ADMINISTRATION; CITY AND COUNTY OF
SAN FRANCISCO; THAI AIRWAYS
INTERNATIONAL, LTD. and DOES 1 to 50,

Defendant.

No. C 04-5334 CW

ORDER GRANTING
DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT

Plaintiff Bibekanand Satpathy alleges that certain Defendants damaged his baggage containing unexposed and undeveloped motion picture film by subjecting the film to x-ray surveillance. Defendant Cathay Pacific Airways, Ltd. (Cathay Pacific) moves for summary judgment and, in the alternative, for partial summary judgment on the issues of whether the rights and liabilities of the parties are governed exclusively by the Warsaw Convention, 49 U.S.C. § 40105; whether Plaintiff's claims are barred for failure to give timely notice; and whether Cathay Pacific is entitled to limited liability under the terms of the Warsaw Convention. Defendant Thai Airways International (Thai Airways) joins the

1 motion.¹ Collectively, Cathay Pacific and Thai Airways are
2 referred as Moving Defendants. Mr. Satpathy opposes the motion.

3 Having considered all of the papers filed by the parties, the
4 Court grants Moving Defendants' motion for summary judgment that
5 the Warsaw Convention applies to the dispute between these three
6 parties and that Plaintiff failed to file timely notice. Because
7 summary judgment is granted on the ground of untimely notice, the
8 Court does not address the issue of limited liability.

9 BACKGROUND

10 1. Evidentiary Objections

11 Cathay Pacific objects to some of the evidence submitted by
12 Plaintiff. The Court has reviewed these evidentiary objections and
13 has not relied on any inadmissible evidence. To the extent that
14 the Court relies on any evidence to which Cathay Pacific objects,
15 such evidence has been found admissible and the objections are
16 overruled. To the extent that the Court decides the motion without
17 considering evidence to which Cathay Pacific has objected, its
18 objections are overruled as moot.

19 2. Factual Background

20 Mr. Satpathy is the principal of Amadore Entertainment, a film
21 production company. According to Mr. Satpathy, he was contracted
22 to film a motion picture in India. The film was part of a media
23 project and was scheduled to be telecast by the Indian government

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25 ¹On February 10, 2005, Plaintiff voluntarily dismissed his
26 claims against Defendant Transportation Security Administration and
27 on March 25, 2005, Plaintiff voluntarily dismissed his claims
28 against Defendant City and County of San Francisco. Defendant
Covenant Aviation Security, Inc. has not joined in this motion for
summary judgment.

1 and distributed in national and international markets. Mr.
2 Satpathy attests that the value of this contract was
3 \$12,000,000.00. In preparation for his business venture, Mr.
4 Satpathy purchased a round-trip ticket from Udaan Travel and was
5 issued a "Passenger Ticket and Baggage Check." The reverse side of
6 the ticket provided notice of the limits of liability under the
7 Warsaw Convention. A notice of the limits of liability was also
8 listed in a ticket jacket which contained the Passenger Ticket and
9 Baggage Check.

10 On November 1, 2003, Mr. Satpathy checked in at the San
11 Francisco International Airport (SFO) with eighteen bags weighing
12 seventy pounds each which, according to Mr. Satpathy, contained
13 unexposed and undeveloped motion picture film and camera
14 accessories. The combined weight was 1,260 pounds. Mr. Satpathy
15 knew that sixteen bags were in excess of the two-bag limit. Cathay
16 Pacific issued Mr. Satpathy an excess baggage ticket showing that
17 he was being charged at a rate of \$121.00 per bag in excess, for a
18 total of \$1,936.00. Mr. Satpathy also received eighteen bag tags
19 for each bag that he checked.

20 According to Mr. Satpathy, large, bright yellow and orange
21 tags with large bold black letters were placed on all eighteen bags
22 indicating "DO NOT X-RAY," and "PACKAGE CONTAINS UNDEVELOPED FILM."
23 Mr. Satpathy declares that he informed a Cathay Pacific counter
24 representative that the baggage contained film that was not to be
25 x-rayed. Mr. Satpathy states that the counter representative and
26 an unidentified supervisor assured him that the bags would not be
27 x-rayed. Mr. Satpathy also declares that he reminded the
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1 representative that on a previous trip in July, 2003, his baggage
2 containing undeveloped film was taken to another counter for manual
3 inspection. Mr. Satpathy claims he suggested to the representative
4 that if such a procedure were again necessary, he was carrying a
5 film changing tent, which is a portable darkroom.

6 Mr. Satpathy asserts that he gave the counter representative a
7 written declaration stating the nature of the checked baggage and
8 an estimate of the value of the film at \$73,000.00. Cathay Pacific
9 denies that this is possible, claiming that certain procedures are
10 followed when a passenger declares value for his or her baggage.
11 Specifically, a Cathay Pacific manager would have to approve any
12 declared value, which is limited to \$3,000 per passenger regardless
13 of the number of bags. If approved, the manager would note the bag
14 tag numbers in the passenger's file, place a "fragile" sticker on
15 the bags and call down to the baggage room to advise of the
16 declaration. In addition, according to Cathay Pacific, Mr.
17 Satpathy would have been charged a supplemental sum and issued a
18 miscellaneous charges order (MCO). The MCO would state the
19 declared value, the contents of the baggage and the supplemental
20 sum. The MCO would also be placed in Mr. Satpathy's flight file.
21 According to Cathay Pacific Airport Service Manager J. Russ Forston
22 who reviewed Mr. Satpathy's flight file, there was no evidence of
23 any declared value or supplemental sum. Forston Dec. ¶ 9.

24 On November 1, 2003, Mr. Satpathy traveled on Cathay Pacific
25 from San Francisco to Bangkok with a stop in Hong Kong. Then, he
26 traveled from Bangkok to Kolkata, India on Thai Airways, arriving
27 on November 4, 2003. At that time, Mr. Satpathy received all
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1 eighteen bags but was not aware of any damage to the film. He
2 proceeded with his movie-shooting schedule. Mr. Satpathy declares
3 that when the first round of filming was completed, he and the
4 motion picture crew took the film to be developed in a motion
5 picture film processing laboratory where he learned that the film
6 was ruined as a result of x-ray damage. Mr. Satpathy returned to
7 the United States in December, 2003, and he declares that he then
8 sought a second opinion on the damaged film. Mr. Satpathy asserts
9 that RGB laboratory in Southern California confirmed the damage to
10 the film in late December, 2003. Thereafter, Mr. Satpathy retained
11 counsel, who provided written notice of the damaged film to Cathay
12 Pacific and Thai Airways on January 5, 2004.

13 On August 23, 2004, Mr. Satpathy filed suit in State court
14 alleging the following State law causes of action: (1) negligence;
15 (2) breach of contract; and (3) fraud/negligent misrepresentation.
16 On December 16, 2004, Thai Airways removed the complaint to this
17 Court.

18 LEGAL STANDARD

19 Summary judgment is properly granted when no genuine and
20 disputed issues of material fact remain, and when, viewing the
21 evidence most favorably to the non-moving party, the movant is
22 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
23 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
24 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
25 1987). Material facts which would preclude entry of summary
26 judgment are those which, under applicable substantive law, may
27 affect the outcome of the case. The substantive law will identify
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1 which facts are material. Anderson v. Liberty Lobby, Inc., 477
2 U.S. 242, 248 (1986).

3 The moving party bears the burden of showing that there is no
4 material factual dispute. Therefore, the court must regard as true
5 the opposing party's evidence, if supported by affidavits or other
6 evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815
7 F.2d at 1289. The court must draw all reasonable inferences in
8 favor of the party against whom summary judgment is sought.

9 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
10 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
11 1551, 1558 (9th Cir. 1991).

12 Where the moving party does not bear the burden of proof on an
13 issue at trial, the moving party may discharge its burden of
14 showing that no genuine issue of material fact remains by
15 demonstrating that "there is an absence of evidence to support the
16 nonmoving party's case." Celotex, 477 U.S. at 325. The moving
17 party is not required to produce evidence showing the absence of a
18 material fact on such issues, nor must the moving party support its
19 motion with evidence negating the non-moving party's claim. Id.;
20 see also Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990);
21 Bhan v. NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991),
22 cert. denied, 502 U.S. 994 (1991). If the moving party shows an
23 absence of evidence to support the non-moving party's case, the
24 burden then shifts to the opposing party to produce "specific
25 evidence, through affidavits or admissible discovery material, to
26 show that the dispute exists." Bhan, 929 F.2d at 1409. A complete
27 failure of proof concerning an essential element of the non-moving
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1 party's case necessarily renders all other facts immaterial.
2 Celotex, 477 U.S. at 323.

3 DISCUSSION

4 I. Applicability of the Warsaw Convention

5 Moving Defendants assert that all rights and liabilities of
6 the parties to this action are governed exclusively by the Warsaw
7 Convention for the Unification of Certain Rules Relating to
8 International Transportation by Air² (Warsaw Convention). Although
9 Plaintiff does not concede that the Warsaw Convention applies to
10 his claims against Moving Defendants, he fails to argue that it
11 does not.

12 The Warsaw Convention prescribes uniform rules governing the
13 international air transportation of passengers, baggage and cargo.
14 Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243,
15 247 (1984). The United States ratified the Warsaw Convention in
16 1934. Id. at 246. The treaty was amended by the Montreal Protocol
17 4, which became effective in the United States in 1999. Perri v.
18 Delta Air Lines, Inc., 104 F. Supp. 2d 164, 168 (E.D.N.Y. 2000).
19 The purpose of the Warsaw Convention is "to create a uniform body
20 of law governing the rights and responsibilities of passengers and
21 air carriers in international air transportation. It was intended
22 to protect the 'international air transportation industry[, which]
23 was in its beginning stages' at the time the Convention was
24 drafted." Dazo v. Globe Airport Sec. Servs., 295 F.3d 934, 937

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26 ² October 12, 1934, 49 Stat. 3000, T.S. No. 876 (1934)
27 reprinted in note following 49 U.S.C. § 40105.

1 (9th Cir. 2001). As a treaty of the United States, the Warsaw
2 Convention supersedes State law, even when the State claim is not
3 cognizable under the Warsaw Convention. U.S. Const. Art. VI, cl.
4 2; El Al Israel Airlines, Ltd. v. Tseng, 525 U.S. 155, 175-76
5 (1999).

6 The Warsaw Convention applies to "all international
7 transportation" defined in part as:

8 any transportation in which, according to the contract
9 made by the parties, the place of departure and the place
10 of destination, whether or not there be a break in the
11 carriage or a transshipment, are situated either within
12 the territories of two High Contracting Parties or within
13 the territory of a single High Contracting Party . . .

14 Warsaw Convention, ch. 1, art. 1, (2).

15 Here, Mr. Satpathy traveled from San Francisco to Hong Kong,
16 Bangkok and Kolkata, India. The places of departure and
17 destination were situated within the territories of High
18 Contracting Parties, namely, the United States and India,
19 respectively. Thus, Mr. Satpathy's travel constituted
20 international transportation as defined by the Warsaw Convention.
21 Therefore, the Warsaw Convention governs the rights and liabilities
22 of Mr. Satpathy, Cathay Pacific Airways and Thai International
23 Airways. Consequently, the Warsaw Convention preempts Mr.
24 Satpathy's State law claims against Cathay Pacific and Thai
25 International. See Tseng, 525 U.S. at 162, 169-75; Carey v. United
26 Airlines, 255 F.3d 1044, 1048, 1051 (9th Cir. 2001).

27 II. Timely Notice Under the Warsaw Convention

28 Cathay Pacific argues that Mr. Satpathy's claims are barred
for failure to give timely written notice as required by the Warsaw

1 Convention. Mr. Satpathy responds that, given the inconspicuous
2 nature of the damage to the film, he acted reasonably upon
3 discovery of the damage and thus satisfied the notice requirements.

4 The Warsaw Convention provides, in pertinent part:

5 2. In case of damage, the person entitled to delivery
6 must complain to the carrier forthwith after the
7 discovery of the damage, and, at the latest, within seven
8 days from the date of receipt in the case of baggage. . .

9 3. Every complaint must be made in writing upon the
10 document of carriage or by separate notice in writing
11 dispatched within the times aforesaid.

12 4. Failing complaint within the times aforesaid, no
13 action shall lie against the carrier, save in the case of
14 fraud on his part.

15 Warsaw Convention, ch. 3, art. 26, (2)-(4).

16 These requirements serve "to facilitate prompt notice of
17 carriers' exposure to liability from damage claims . . . sparing
18 potential defendants of the burden of having to defend themselves
19 against 'stale' claims brought long after the wrong alleged."
20 Hitachi Data Sys. v. United Parcel Serv., 76 F.3d 276, 279 (9th
21 Cir. 1996); see United States v. Kubrick, 444 U.S. 111, 117 (1979).

22 It is undisputed that Mr. Satpathy received his baggage on
23 November 4, 2003, and first provided written notice to Moving
24 Defendants on January 5, 2004. Moving Defendants contend that this
25 fact is sufficient to bar Mr. Satpathy's claim for failure to
26 provide timely notice given the express terms of the Warsaw
27 Convention. Furthermore, citing Flying Tiger Line, Inc. v. United
28 States, 170 F. Supp. 422, 426 (Ct. Cl. 1959), Moving Defendants

1 argue that, because the Warsaw Convention is an international
2 agreement, "an American court does not have the right to interpret
3 it as freely as it might interpret an American statute or
4 contract." Plaintiff cites no authority for his argument that,
5 considering the inconspicuous nature of the damage to the film,
6 enforcing the seven-day notice provision "would be a gross
7 distortion of the intent of the Warsaw Convention." Opp. at 5.
8 Plaintiff argues that he acted reasonably under the circumstances
9 because, upon verification of the damage, he satisfied the notice
10 requirement.

12 On the other hand, Moving Defendants present no authority for
13 the proposition that the seven-day notice requirement may not be
14 enlarged when the damage cannot be discovered within that time
15 period. In Stud v. Trans International Airlines, 727 F.2d 880, 883
16 (9th Cir. 1984), the Ninth Circuit acknowledged that there is an
17 argument that the notice period could be enlarged under such
18 circumstances, but did not have to decide the question because the
19 shipper in that case knew of the destruction within the required
20 time-frame. However, Stud is applicable nevertheless. In Stud,
21 the plaintiff transported a horse which was in good health upon
22 arrival at the destination airport. Id. at 881. Shortly
23 thereafter, the horse became visibly ill and died ten days later.
24 An autopsy done the next day concluded that the horse died of
25 pneumonia brought on by the stress of travel. Id. A final autopsy
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1 dated more than two months later concluded that the temperature
2 fluctuations in the aircraft probably caused the horse's fatal
3 illness. Id. The plaintiff provided written notice of its claim
4 four days after the final autopsy. Id. The plaintiff argued that
5 notice was timely because he did not know that he could hold the
6 defendant airline liable until he received the final autopsy
7 report. Id. at 883. The Ninth Circuit stated:

9 Stud's notice of complaint was not timely. Even if we
10 assume for the sake of argument that the fourteen-day
11 period may be enlarged when damage to or destruction of
12 goods could not, in the exercise of due diligence, be
13 discovered within that period, it should not be enlarged
14 here. Within fourteen days of receipt, a diligent
15 shipper would have known-and Stud in fact knew-of both
the damage to and the destruction of Super Clint. The
Convention did not require Stud to prove to a certainty
at the time of giving notice that Transamerica had caused
Super Clint's death. There was no need to wait for a
final autopsy report before giving notice of complaint.

16 Id.³

17 Likewise, Mr. Satpathy knew of the damage to his film
18 immediately after he used it for the first round of filming in
19 India and developed it in a motion picture film processing
20 laboratory where he found the film completely ruined by x-ray
21 damage. However, Mr. Satpathy provides no evidence that he gave
22 written notice to Moving Defendants within seven days of
23 discovering the damage. Rather, he waited until he returned to the

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25 ³ In Stud, the plaintiff had fourteen days, under an earlier
26 version of the Warsaw Convention, to give notice because "goods"
27 had been damaged. Where, as here, there is alleged damage to
baggage, a claimant has seven days to provide written notice under
the terms of the Warsaw Convention as amended by the Montreal
Protocol No. 4.

1 United States, obtained a second opinion on the cause of the damage
2 to the film, and hired counsel who then provided notice. Id. at ¶¶
3 14, 15. Stud instructs that Mr. Satpathy should have provided
4 notice to Moving Defendants within seven days of his discovery of
5 the damage to the film because the Convention does not require a
6 claimant to prove to a certainty, at the time of giving notice,
7 that the airline had caused the damage.
8

9 Accordingly, even assuming that the Warsaw Convention could be
10 construed to allow the enlargement of the notice period when damage
11 to or destruction of goods could not, in the exercise of due
12 diligence, be discovered within that period, it should not be
13 enlarged here because Mr. Satpathy should have given notice of the
14 damage to his film immediately after the film was developed in
15 India when he first discovered the damage, not weeks later after he
16 returned to the United States, obtained another examination and
17 hired counsel. Therefore, Moving Defendants' motion for summary
18 judgment is granted.
19

20 CONCLUSION

21 For the forgoing reasons, Defendant's motion for summary
22 judgment is GRANTED.

23 IT IS SO ORDERED.

24 Dated: 9/19/05
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27 CLAUDIA WILKEN
28 United States District Judge